

Statement by the United States at the Meeting of the WTO Dispute Settlement Body

Geneva, October 28, 2015

1. SURVEILLANCE OF IMPLEMENTATION OF RECOMMENDATIONS ADOPTED BY THE DSB

**A. UNITED STATES – SECTION 211 OMNIBUS APPROPRIATIONS ACT OF 1998: STATUS REPORT BY THE UNITED STATES
(WT/DS176/11/ADD.154)**

- The United States provided a status report in this dispute on October 15, 2015, in accordance with Article 21.6 of the DSU.
- Several bills introduced in the current U.S. Congress would repeal Section 211. Other bills would modify Section 211.
- The U.S. Administration will continue to work on solutions to implement the DSB's recommendations and rulings and resolve this matter with the European Union.

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B. UNITED STATES – ANTI-DUMPING MEASURES ON CERTAIN HOT-ROLLED STEEL PRODUCTS FROM JAPAN: STATUS REPORT BY THE UNITED STATES (WT/DS184/15/ADD.154)

- The United States provided a status report in this dispute on October 15, 2015, in accordance with Article 21.6 of the DSU.
- The United States has addressed the DSB's recommendations and rulings with respect to the calculation of anti-dumping margins in the hot-rolled steel anti-dumping duty investigation at issue.
- With respect to the recommendations and rulings of the DSB that have yet to be addressed, the U.S. Administration will work with the U.S. Congress with respect to appropriate statutory measures that would resolve this matter.

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C. UNITED STATES – SECTION 110(5) OF THE US COPYRIGHT ACT:
STATUS REPORT BY THE UNITED STATES (WT/DS160/24/ADD.129)

- The United States provided a status report in this dispute on October 15, 2015, in accordance with Article 21.6 of the DSU.
- The U.S. Administration will continue to confer with the European Union, and to work closely with the U.S. Congress, in order to reach a mutually satisfactory resolution of this matter.

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D. EUROPEAN COMMUNITIES - MEASURES AFFECTING THE APPROVAL AND MARKETING OF BIOTECH PRODUCTS: STATUS REPORT BY THE EUROPEAN UNION (WT/DS291/37/ADD.92)

- The United States thanks the European Union (“EU”) for its status report and its statement today.
- As the United States has noted repeatedly since the adoption of the DSB recommendations and rulings in this dispute, the United States remains concerned with the EU’s measures affecting the approval and marketing of biotech products.
- Dozens of biotech applications remain pending in the EU approval system. One of these applications has been pending for well over a decade. The ongoing backlog and delays remain a serious impediment to trade in biotech products.
- Further, even when the EU does approve a biotech product, the approval may not apply within one or more EU Member states. Instead, EU Member states have banned such products, and have done so without any apparent scientific justification.
- Instead of taking steps to address this problem, the EU Commission has proposed an amendment to EU biotech approval regulations that would facilitate the adoption of additional EU Member state bans on biotech products approved at the EU-level.
- The United States is concerned about the relationship of such a proposal to the EU’s obligations under the SPS Agreement, and about the negative impacts of this proposal with respect to the movement and use of biotech products throughout the entirety of the EU.
- The United States urges the EU to ensure that its biotech approval measures are consistent with its obligations under the SPS Agreement. And to the extent that the EU considers revisions to its biotech approval regulations, the EU should ensure that any revisions are consistent with its WTO obligations and should notify these revisions to the SPS Committee pursuant to Article 7 of the SPS Agreement.

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E. UNITED STATES – ANTI-DUMPING MEASURES ON CERTAIN SHRIMP FROM VIET NAM (WT/DS404/11/ADD.40)

- The United States provided a status report in this dispute on October 15, 2015, in accordance with Article 21.6 of the DSU.
- As we have noted at past DSB meetings, in February 2012 the U.S. Department of Commerce modified its procedures in a manner that addresses certain findings in this dispute.
- The United States will continue to consult with interested parties as it works to address the other recommendations and rulings of the DSB.

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G. UNITED STATES – COUNTERVAILING MEASURES ON CERTAIN HOT ROLLED CARBON STEEL FLAT PRODUCTS FROM INDIA: STATUS REPORT BY THE UNITED STATES (WT/DS436/14)

- The United States provided a status report in this dispute on October 15, 2015, in accordance with Article 21.6 of the DSU.
- On October 5, 2015, pursuant to section 129(b)(2) of the Uruguay Round Agreements Act (“URAA”), the U.S. Trade Representative requested the Department of Commerce to issue a determination in the underlying proceeding that is not inconsistent with the findings of the panel and the Appellate Body findings in this dispute.
- Also on October 5, 2015, pursuant to section 129(a)(1) of the URAA, the U.S. Trade Representative requested the International Trade Commission to issue an advisory report on whether U.S. law permits the Commission to take steps in connection with the underlying proceeding that would render its determination subject to the DSB’s recommendations not inconsistent with the WTO’s findings.
- The United States will continue to consult with interested parties as it works to address the recommendations and rulings of the DSB.

2. UNITED STATES – CONTINUED DUMPING AND SUBSIDY OFFSET ACT OF 2000: IMPLEMENTATION OF THE RECOMMENDATIONS ADOPTED BY THE DSB

A. STATEMENTS BY THE EUROPEAN UNION AND JAPAN

- As the United States has noted at previous DSB meetings, the Deficit Reduction Act – which includes a provision repealing the Continued Dumping and Subsidy Offset Act of 2000 – was enacted into law in February 2006. Accordingly, the United States has taken all actions necessary to implement the DSB’s recommendations and rulings in these disputes.
- We recall, furthermore, that the EU, Japan, and other Members have acknowledged that the Deficit Reduction Act does not permit the distribution of duties collected on goods entered after October 1, 2007, over eight years ago.
- We therefore do not understand the purpose for which the EU and Japan have inscribed this item today.
- With respect to comments regarding further status reports in this matter, as we have already explained at previous DSB meetings, the United States fails to see what purpose would be served by further submission of status reports which would repeat, again, that the United States has taken all actions necessary to implement the DSB’s recommendations and rulings in these disputes.
- Indeed, as these very WTO Members have demonstrated repeatedly when they have been a responding party in a dispute, there is no obligation under the DSU to provide further status reports once a Member announces that it has implemented those DSB recommendations and rulings, regardless of whether the complaining party disagrees about compliance.

3. CHINA – CERTAIN MEASURES AFFECTING ELECTRONIC PAYMENT SERVICES

A. STATEMENT BY THE UNITED STATES

- Despite numerous interactions between the United States and China in the DSB and elsewhere, the United States continues to have serious concerns that China has failed to bring its measures into conformity with its WTO obligations.
- China continues to impose its ban on foreign suppliers of electronic payment services (“EPS”) by requiring a license, while at the same time failing to issue all specific measures or procedures for obtaining that license.
- The United States previously has taken note of an April 2015 State Council decision, which indicates China’s intent to open up its EPS market following issuance of implementing regulations by the People’s Bank of China and the China Banking Regulatory Commission.
- The United States notes that the People’s Bank of China has issued draft regulations setting forth some procedures for EPS suppliers to follow when seeking a license.
- To date, however, the China Banking Regulatory Commission has not issued any draft or final regulations implementing the State Council’s April 2015 decision. Nor has the People’s Bank of China issued final regulations.
- As a result, a single, Chinese enterprise continues to be the only EPS supplier able to operate in China’s domestic market.
- As required under its WTO obligations, China must adopt the implementing regulations necessary for allowing the operation of foreign EPS suppliers in China, and any regulations must be implemented in a consistent and fair way.
- We continue to look forward to the prompt issuance and implementation of all measures necessary to permit foreign EPS suppliers to do business in China.

6. INDONESIA – SAFEGUARD ON CERTAIN IRON OR STEEL PRODUCTS

A. REQUEST FOR THE ESTABLISHMENT OF A PANEL BY VIETNAM
(WT/DS496/3)

- We would request clarification with regard to the reference to Article 9.1 of the DSU. We would not consider a decision to establish a single panel under Article 9.1 to be appropriate in these circumstances because a panel in the dispute brought by Chinese Taipei was already established at the last meeting of the DSB. In this situation, we would consider the parties could seek harmonization pursuant to Article 9.3 of the DSU. We would therefore seek clarification on what the parties intend.

Second Intervention

- We would not want to stand in the way of the agreement of the parties, but we disagree that a decision under Article 9.1 is appropriate in these circumstances. In regard to the EU delegate's reference to the phrase "whenever feasible" in Article 9.1, we would consider that to refer to a situation where no panel has been established. That is not the case here. What the parties are seeking to do here is to expand the terms of reference of a panel that was already established, but that is not establishing a single panel as covered by Article 9.1. Again, we consider another proper approach would be under Article 9.3.

9. CHINA — MEASURES IMPOSING ANTI-DUMPING DUTIES ON HIGH-PERFORMANCE STAINLESS STEEL SEAMLESS TUBES ("HP-SSST") FROM JAPAN
 - A. REPORT OF THE APPELLATE BODY (WT/DS454/AB/R AND WT/DS454/AB/R/ADD.1) AND REPORT OF THE PANEL (WT/DS454/R AND WT/DS454/R/ADD.1 AND WT/DS454/R/CORR.1)
 10. CHINA — MEASURES IMPOSING ANTI-DUMPING DUTIES ON HIGH-PERFORMANCE STAINLESS STEEL SEAMLESS TUBES ("HP-SSST") FROM THE EUROPEAN UNION
 - A. REPORT OF THE APPELLATE BODY (WT/DS460/AB/R AND WT/DS460/AB/R/ADD.1) AND REPORT OF THE PANEL (WT/DS460/R AND WT/DS460/R/ADD.1 AND WT/DS460/R/CORR.1)
- The United States participated as a third-party in this dispute and would like to offer an observation on the reports.
 - As described in our submissions in this dispute, the United States had concerns regarding the Panel's reasoning with respect to the treatment in a WTO dispute of confidential information submitted in domestic trade remedy proceedings. In particular, the United States was concerned that certain statements in the Panel report might have been interpreted to suggest that Members are required to disclose confidential information submitted to investigating authorities, without the prior authorization of the submitting entity.
 - The proper functioning of trade remedy proceedings, however, requires that interested parties in those proceedings have confidence that any confidential information they submit will not be disclosed without their consent.
 - Therefore, the United States welcomes the Appellate Body's finding that the Panel had "conflated" Members' confidentiality obligations under Article 6.5 of the AD Agreement, which govern the treatment of confidential information in domestic anti-dumping proceedings, and the confidentiality provision in Article 17.7 of the AD Agreement, which relates to the treatment of confidential information submitted in WTO dispute

settlement proceedings.¹ For this reason, the Appellate Body declared the Panel's findings on these issues moot and of no legal effect. This finding promotes the interest of all Members in preserving the established rules for the protection of confidential information submitted in trade remedy proceedings.

- I want to thank my Japanese colleague for drawing to the DSB's attention certain procedural issues that arose in the scheduling of this dispute. As he mentioned, these are also described by the Appellate Body in its reports, at paragraphs 1.27 to 1.30, which helps Members develop a better understanding of the circumstances surrounding circulation of the reports.
- In light of the many issues appealed by the parties, and their apparent acceptance of the delay in issuance of the reports, I have no comments today on the 90-day deadline we have much discussed here in the DSB.
- We would note, though, that Members could benefit from understanding better two aspects of the Appellate Body's explanation for the delay in issuing the reports.
- In addition to the complexity of the appeal, the Appellate Body cited to a "shortage of staff in the Appellate Body Secretariat".² As Japan notes, three appeals were being considered at any one time during the course of this appeal. And we understand from the Secretariat's budget proposal that the number of staff posts was increased in 2014 from 15 to 18. So, we would benefit from more information on the "shortage of staff" cited. Perhaps the Director-General's presentation later today can shed additional light on this issue.
- Second, the reports indicate that the date of circulation of these reports was affected "due to a pending request for a change in the working schedule in the parallel appellate proceedings in DS381."³ The implication is that the delay in the dates in another appeal also delayed the circulation of the reports in this appeal. And I would note that there was no overlap in the composition of the AB Divisions hearing this appeal and the appeal in DS381. We therefore could also benefit from more information on how the schedule in one appeal can affect the schedule in another appeal involving different parties and being heard by different AB members.

¹ Appellate Body Report, para. 5.316.

² Appellate Body Report, para. 1.29.

³ Appellate Body Report, paras. 1.29-1.30.

- As WTO Members consider resource and workload issues together with the WTO Secretariat, we think greater transparency will lead to a better understanding of the challenges facing the system and can help us to identify the most appropriate solutions.

12. STATEMENT BY THE DIRECTOR-GENERAL REGARDING DISPUTE SETTLEMENT ACTIVITIES

- We will keep our comments brief and want to express our gratitude to the Director-General for his report and the personal attention he has brought to these set of challenges. Thank you also to the DSB Chair and the Deputy Director-General.
- We also appreciate the steps that you have taken or proposed. We recognize they do not present definite solutions. The Director-General has posed challenges to us as Members, and we take note. We will examine closely the information you have provided.
- Given resource constraints on the WTO and the projected level of activity for the WTO dispute settlement system going forward, it's our sense that we will need to be creative in considering solutions to the problem of delays to maintain an efficient and high-quality mechanism.
- We look forward to further discussion with Members, the Chair, the Deputy Director-General, and the Secretariat of this important issue.

OTHER BUSINESS

- We are surprised by Argentina's statement today. It would have been preferable for Argentina to have provided more advance notice of this issue. Given that Argentina has chosen to make this statement under other business, we will avoid engaging in a lengthy discussion and would instead refer Argentina and other Members to the U.S. statement made on this issue at the August 31 DSB meeting.
- As we explained at that time, the United States had long been moving forward with its evaluation of Argentina's requests for access for beef imports, and action on those requests would address Argentina's concerns about the length of the regulatory process. As we stated in August, those evaluations did move forward, and the United States Department of Agriculture was able to propose and complete regulatory actions several months prior.
- These U.S. administrative actions, taken following the rigorous, science-based review that the United States applies to any application, now permit the import of Argentine beef under conditions that meet the high level of protection of the United States, in particular to ensure that foot-and-mouth disease (FMD) will not be introduced into the United States through beef imported from Argentina. Based on those actions, taken well in advance of the panel report, the United States considers that it has addressed the matters raised in this dispute.
- With regard to Argentina's statement today, I would first note that we do not consider Argentina's reference to "protectionist lobbies" to be language appropriate for this forum.
- In relation to certain proposals in the Congress, to which Argentina has referred, we would again clarify that these are proposals only and have not been enacted. As such, these proposals do not have any effect on the administrative action that USDA has taken.
- Nevertheless, as we stated in August, we remain available to confer further with Argentina in relation to the actions taken by the United States on its beef approval applications.